

Effective 5/10/2016

78B-6-1304 Motions related to a notice of pendency of an action.

- (1) Any time after a notice has been filed pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:
 - (a) a party to the action; or
 - (b) a person with an interest in the real property affected by the notice, including a prospective purchaser with an executed purchase contract.
- (2) A court shall order notice of pendency of action released if:
 - (a) the court receives a motion to release under Subsection (1); and
 - (b) after a notice and hearing if determined to be necessary by the court, the court finds that the claimant has not established by a preponderance of the evidence the validity of the real property claim that is the subject of the notice.
- (3) In deciding a motion under Subsection (2), if the underlying action for which a notice of pendency of action is filed is an action for specific performance, a court shall order a notice released if:
 - (a) the court finds that the party filing the action has failed to satisfy the statute of frauds for the transaction under which the claim is asserted relating to the real property; or
 - (b) the court finds that the elements necessary to require specific performance have not been established by a preponderance of the evidence.
- (4) If a court releases a claimant's notice pursuant to this section, that claimant may not record another notice with respect to the same property without an order from the court in which the action is pending that authorizes the recording of a new notice of pendency.
- (5) Upon a motion by any person with an interest in the real property that is the subject of a notice of pendency, a court may, at anytime after the notice has been recorded, require, as a condition of maintaining the notice, that the claimant provide security to the moving party in the amount and form directed by the court, regardless of whether the court has received an application to release under Subsection (1).
- (6) A person who receives security under Subsection (5) may recover from the surety an amount not to exceed the amount of the security upon a showing that:
 - (a) the claimant did not prevail on the real property claim; and
 - (b) the person receiving the security suffered damages as a result of the maintenance of the notice.
- (7) The amount of security required by the court under Subsection (5) does not establish or limit the amount of damages or reasonable attorney fees and costs that may be awarded to a party who is found to have been damaged by a wrongfully filed notice of pendency.
- (8) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:
 - (a) the nonprevailing party acted with substantial justification; or
 - (b) other circumstances make the imposition of attorney fees and costs unjust.

Amended by Chapter 306, 2016 General Session